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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,319	04/12/2007	Manfred Berndt	20040232-2	6504
22878 7590 08/18/2011 Agilent Technologies, Inc, in care of: CPA Global P. O. Box 52050 Minneapolis, MN 55402				
EXAMINER ELOSHWAY, NIKI MARINA				
ART UNIT 3728		PAPER NUMBER		
NOTIFICATION DATE 08/18/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com
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Office Action Summary**Application No.**

10/589,319

Applicant(s)

BERNDT ET AL.

Examiner

NIKI ELOSHWAY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-9 and 11-27 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-7, 11-20 and 25-27 is/are rejected.
- 8) ☒ Claim(s) 8, 9, 21-24 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CIBO)
Paper No(s) Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s) Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 6, 2010 has been entered.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 recites the limitation "the seal" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5-7, 11, 12, 15, 19-21, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos (U.S. 5,123,574) in view of Voloshin (U.S. 6,176,384). Poulos teaches a cover 10 for sealing a container 60 comprising at least one bottom layer 20 and at least one top layer 30 arranged over said bottom layer. The bottom and top layer each comprising a structure to form an aperture (col. 2 lines 56-59, and element 34) of the cover and allowing access through the layers into the container. The movable layer 40 is arranged to be movable in a plane between the at least one bottom layer and the at least one top layer for closing an aperture in the bottom and top layer.

Poulos discloses the claimed invention except for the apertures of the top and bottom layers being recloseable. Voloshin teaches that it is known to provide a closure with flaps at the aperture (see elements 26''). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Poulos with the apertures being recloseable apertures, as taught by Voloshin, in order to provide sealing properties and prevent accidental dispensing of product.

Regarding claim 19, Poulos discloses the claimed invention except for the thickness of the cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Poulos with the cover having a thickness as set forth in claim 19, in order to make the cover flexible and lightweight and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 20, Poulos discloses the claimed invention except for the aperture comprising an area smaller than 60 mm². It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure of Poulos with the aperture comprising an area smaller than 60 mm², in order to restrict the amount of venting or dispensing and since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

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7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos (U.S. 5,123,574) in view of Voloshin (U.S. 6,176,384), as applied to claim 2 above, and further in view of Shillington (U.S. 5,024,327). The modified closure of Poulos discloses the claimed invention except for the flap being formed by a U-shaped cut. Shillington teaches that it is known to form closure flaps from U-shaped cuts (see figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Poulos with the flaps being formed by U-shaped cuts, as taught by Shillington, in order to give the flaps a rounded free end.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos (U.S. 5,123,574) in view of Voloshin (U.S. 6,176,384), as applied to claim 1 above, and further in view of Werth (U.S. 2004/0256421). The modified closure of Poulos discloses the claimed invention except for the seal. Werth teaches that it is known to form a closure with a seal (see element 51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Poulos with a seal, as taught by Werth, in order to prevent product from leaking between the layers of the closure.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos (U.S. 5,123,574) in view of Voloshin (U.S. 6,176,384), as applied to claim 1 above, and further in view of Werth (U.S. 2004/0256421) and Stull (U.S. 5,071,017). The modified closure of Poulos discloses the claimed invention except for the silicone seal. Werth teaches that it is known to form a closure with a seal (see element 51). Stull teaches that it is known to construct a seal of silicone (see col. 6 lines 38-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Poulos with a silicone seal, as taught by Werth and Stull, in order to prevent product from leaking between the layers of the closure, to give the seal the strength and flexibility characteristic of silicone, and since it has been held to be within the general skill of a worker in the art to select a known

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material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos (U.S. 5,123,574) in view of Voloshin (U.S. 6,176,384), as applied to claim 1 above, and further in view of Jenkins et al. (U.S. 4,847,050). The modified closure of Poulos discloses the claimed invention except for a layer being polyester. Jenkins et al. teach that it is known to provide a seal with a layer being polyester (see col. 8 lines 58-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Poulos with a layer being polyester, as taught by Jenkins et al., in order to give the seal the strength characteristic of polyester, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poulos (U.S. 5,123,574) in view of Voloshin (U.S. 6,176,384), as applied to claim 1 above, and further in view of Mavin et al. (U.S. 2004/0217083). The modified closure of Poulos discloses the claimed invention except for the electrically conductive coating. Mavin et al. teach that it is known to provide a seal with an electrically conductive coating (see paragraph [0061]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure of Poulos with an electrically conductive coating, as taught by Mavin et al., in order to allow the closure to be used in applications which require electrically conductive material.

12. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Berray et al. (U.S. 6,939,513) in view of Poulos (U.S. 5,123,574). Berray et al. teach a method of retrieving or filling a liquid in a well plate having a plurality of containers for liquids. The method comprising providing the well plate (col. 1 lines 48-51) with a cover 26 arranged on top of the well plate (col. 2 lines 30-39), opening the recloseable aperture of at least one container of the well plate (col. 3 line 65 through col. 4

line 2); retrieving or filling the liquid from the opened container or into the opened container; closing the opened aperture after retrieval or filling (col. 4 lines 3-9).

Berray et al. disclose the claimed method except for the closure structure having a moveable layer between the top and bottom layers. Poulos teaches that it is known to provide a closure with a top layer, bottom layer and moveable intermediate layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Berray et al. with the closure of Poulos having a moveable intermediate layer, in order to selectively seal the container.

Allowable Subject Matter

13. Claims 8, 9 and 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments filed July 13, 2010 have been fully considered but they are not persuasive. The new grounds of rejection were necessitated by the amendment filed December 6, 2010.

Conclusion

15. **THIS ACTION IS MADE NON-FINAL.**

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
Art Unit 3728

nme